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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,701	03/25/2004	Philippe Msika	065691-0355	6071
22428 7590 07/06/2007 FOLEY AND LARDNER LLP SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/808,701	Applicant(s) MSIKA, PHILIPPE	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Receipt is acknowledged of amendment filed on April 3, 2007. Claims 1-24 are pending. Claim rejections made under 35 U.S.C. § 102 and claim objection as indicated in the previous Office action dated October 6, 2007, are withdrawn in view of applicants' claim amendments. Claim rejections made under 35 U.S.C. § 103 (a) as indicated in the same Office action are withdrawn and modified to address the claim amendment in part, and in view of the full translation of Quelle (DE 4244418).

The indicated allowability of claim 13 is withdrawn in view of the full translation of Quelle (DE 4244418).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-6, 8-10, 21, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport (US 5444091) in view of Frei et al (Internat'l J. of Cosmetic Science) ("Frei").**

Rapaport teaches a method of treating striae distensae lesions (stretchmarks) by topically applying to the affected skin a composition comprising alpha-hydroxy acids in the amount ranging from 2-30 % by weight, more preferably 5-20 % by weight. See Example; instant claims 1 and 9. The reference teaches lactic acid. See col. 3, lines 36

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– 45; instant claim 10. The reference teaches that the composition promotes rigidity and elasticity of the skin. See col. 4, lines 31 – 38.

While Rapaport teaches adding other ingredients including anti-oxidants and botanical extracts and to protect, prepare or mediate the action of the composition on the skin, the reference fails to teach soya protein.

Frei teaches fermented soya peptide extracted from Lactobacillus bacterium for increasing skin firmness, elasticity, and tone. See abstract; instant claims 1-4. The peptide is taught as having molecular weight of 800-1300 Daltons. See p. 161; instant claim 5-6.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of Rapaport by incorporating soya peptide, as motivated by Frei, because Rapaport teaches that stretchmarks are treated by promoting the rigidity and elasticity of the skin and suggests adding additives to enhance the performance of the product; and Frei teaches the effectiveness of soya protein in improving firmness and elasticity of skin. The skilled artisan would have had a reasonable expectation of successfully improving the method of treating stretchmarks since soya protein would improve the firmness and elasticity of the skin.

**Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport and Frei as applied to claims 1-6, 8-10, 21, and 22 as above, and further in view of Andary et al. (US 5719129) ("Andary")**

The combined references fail to teach the amount by which soya peptide is used in a topical composition.

Andary discloses an anti-aging cream comprising 25 % of oraposide encapsulated in liposomes, which contains soya protein in 1 % by the total weight of the oraposide liposomes. See Example 8; instant claim 7.

It would have been obvious to a skilled artisan to modify the teaching of the combined references by adding soya peptide in the amount as suggested by Andary. The skilled artisan would have been motivated to incorporate the teaching of Andary to the Rapaport/Frei prior art because all references are directed to topically treating aged skin, and Andary teaches the specific amount by which soya peptide is used in an anti-aging formulation.

**Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport and Frei as applied to claims 1-6, 8-10, 21, and 22 as above, and further in view of Flick (Cosmetic and Toiletry Formulations, 1995)**

The combined references fail to teach the pH of the composition.

Flick teaches that an alpha hydroxy acid cream comprising 14.2 % of lactic acid (88%) is formulated to pH of 3.5. See p. 114.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to formulate the composition of the combined references to pH of 3.5 as motivated by Flick because Rapaport teaches an alpha hydroxy acid cream wherein the alpha hydroxy acid is lactic acid used up to 30 % by weight; and Flick teaches the suitable pH of 14.2 % lactic acid (88%) composition. The skilled artisan would have had a reasonable expectation of successfully producing a stable alpha hydroxy acid cream composition that is suitable for topical application.

**Claims 12-17, 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport in view of Quelle (DE 4244418, English translation).**

Rapaport, as discussed above, teaches a method of treating stretchmarks by topically applying to the affected skin a composition comprising alpha-hydroxy acids in the amount ranging from 2-30 % by weight, more preferably 5-20 % by weight. See Example; instant claims 12, 15-17.

Rapaport fails to teach tripeptide consisting of the amino acids glycine, histidine, and lysine.

Quelle teaches the use of tripeptide Gly-His-Lys in cosmetic compositions to treat the skin against aging and as radical scavenger (antioxidant). See translation, p. 4, 16, Since the reference illustrates in Application Examples 3-5 the amount of a similar but "slightly different" tripeptide preparation Gly-His-Lys used for the same purposes, it would have been obvious to a skilled artisan to use tripeptide Gly-His-Lys in this amount. See instant claim 16. The reference also teaches preparation of peptide-trace element complexes by conjugating the tripeptides with copper(II) acetate monohydrate on page 16, and the mineral substances and trace elements that are suitable for this purpose include zinc. See Claim 4, instant claims 13

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the composition of Rapaport by incorporating the tripeptide Gly-His-Lys, as motivated by Quelle, because Rapaport teaches that stretchmarks are treated by promoting the rigidity and elasticity of the skin and suggests adding additives to enhance the performance of the product; and also teaches that the tripeptide

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counters the breakdown of collagen and stimulates the permanent production of interfibrillary material, which promotes both rigidity and elasticity; and Quelle teaches that the tripeptide promotes collagen synthesis and better antioxidant activity. The skilled artisan would have had a reasonable expectation of successfully enhancing the method of treating stretchmarks, since it is expected that the tripeptide would treat aging symptoms of the skin.

**Claims 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport and Quelle as applied to claims 12-17, 23, and 24 as above, and further in view of Flick.**

The combined references fail to teach the pH of the composition.

Flick teaches that an alpha hydroxy acid cream comprising 14.2 % of lactic acid (88%) is formulated to pH of 3.5. See p. 114.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to formulate the composition of the combined references to pH of 3.5 as motivated by Flick because Rapaport teaches an alpha hydroxy acid cream wherein the alpha hydroxy acid is lactic acid used up to 30 % by weight; and Flick teaches the suitable pH of 14.2 % lactic acid (88%) composition. The skilled artisan would have had a reasonable expectation of successfully producing a stable alpha hydroxy acid cream composition that is suitable for topical application.

**Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rapaport in view of Frei and Quelle.**

The references are discussed above. Rapaport teaches a method of topically applying alpha hydroxy acid cream to treat stretchmarks in skin. The reference fails to teach soya peptide and tripeptide consisting of Gly-His-Lys.

Frei teaches fermented soya peptide extracted from Lactobacillus bacterium for increasing skin firmness, elasticity, and tone. See abstract; instant claims 1-4. The peptide is taught as have a molecular weight of 800-1300 Daltons. See p. 161; instant claim 5-6.

Quelle teaches the use of tripeptide Gly-His-Lys in cosmetic compositions to treat the skin against aging and as radical scavenger (antioxidant). See abstract.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the method of Rapaport by adding to the alpha hydroxy acid composition soya peptide and tripeptide, as motivated by Frei and Quelle, respectively. The motivation is found in the combined teachings of the references, as 1) Rapaport teaches that stretchmarks are treated by promoting the rigidity and elasticity of the skin, and suggests adding additives to enhance the performance of the product; such as botanical extracts and antioxidants; 2) Frei teaches that soya peptide effectively improves elasticity and firmness of the skin; and 3) Quelle teaches that the tripeptide promotes collagen synthesis and better antioxidant activity. The skilled artisan would have had a reasonable expectation of successfully enhancing the method treating stretchmarks since soya peptide and tripeptide are anti-aging agents suitable for cosmetic formulations.

### ***Response to Arguments***



Applicant's arguments filed on April 3, 2007 have been fully considered but they are not persuasive in part, and moot in view of the new grounds of rejection in part.

Applicants assert that it is not clear where Frei teaches that soya peptide increases skin firmness, elasticity, and tone. In response, the abstract teaches that soya peptide increases the thickness of the epidermis in skin model, and that skin aging results with reduction of skin thickness and loss of skin firmness, elasticity, and tone. Thus it is obvious that the use of soya peptide results in improving skin firmness, elasticity, and tone. See also Discussion, which states that soya peptide promotes collagen, elastin and glycosaminoglycans synthesis by fibroblasts and in turn helps the skin look younger.

Applicant's reference of the p. 171, first paragraph is directed to "another study", reference number [25], and is not the teaching of Frei.

Applicants' interpret the reference teaches that the teaching there indicates the efficacy of the soya protein **may or may not work** is unpersuasive. A reasonable skilled artisan would not pass the teaching and suggestion of a prior art as a mere conjecture that bears no meaning.

Applicants also argue, a "hyperplastic response", which is mentioned in Rapaport, cannot be assumed from an unknown way the soya peptide acts. Examiner respectfully points out that the present rejection is based on the independent, objective teaching in Frei that soya protein improves the firmness and elasticity of skin, and not any relation of the protein to the hyperplastic response in skin.

With respect to the rejection made in view of Rapaport and Quelle, applicants dismisses the basis of the rejection as a mere identification of the ingredient. On the contrary, the rejection clearly cites that the tripeptide is useful as an anti-aging factor and antioxidant useful to treat skin aging.

***Conclusion***


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Gina C. Yu  
Patent Examiner